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**FISCAL IMPACT STATEMENT**

**LS 6069**

**BILL NUMBER:** HB 1437

**NOTE PREPARED:** May 7, 2007

**BILL AMENDED:** Apr 28, 2007

**SUBJECT:** Forensic Diversion and Criminal Gangs

**FIRST AUTHOR:** Rep. Foley

**FIRST SPONSOR:** Sen. Bray

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:** X **GENERAL**  
**DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

- A. *Forensic Diversion* – It imposes additional requirements for a person to participate in a pre-conviction or post-conviction forensic diversion program. It provides that a person who has both a mental illness and an addictive disorder may participate in a forensic diversion program. (Current law allows a person who has a mental illness or an addictive disorder to participate.) It permits a court to allow a person identified by a prosecuting attorney's office or pretrial services bureau to utilize the facilities or programs offered by an alcohol and drug services program.
- B. *Criminal Gang Issues* – It changes the definition of "criminal gang", for purposes of certain criminal statutes, to provide that a criminal gang consists of at least three members (instead of five members). It makes it a Class D felony for an individual to solicit, recruit, entice, or intimidate another individual to join a criminal gang. It makes criminal gang recruitment a Class C felony if: (1) the solicitation, recruitment, enticement, or intimidation to join a criminal gang occurs within 1,000 feet of school property; or (2) the individual being solicited, recruited, enticed, or intimidated to join a criminal gang is less than 18 years of age.
- C. *Criminal Gang Witness Protection Program* – It requires the Criminal Justice Institute to develop, maintain, and identify grants and other funds for the criminal gang witness protection program. It establishes a program to assist a person who witnesses criminal gang crime with certain expenses. It requires a court to order a criminal gang member to make restitution to a victim of a felony or misdemeanor committed by the criminal gang member.

(The introduced version of this bill was prepared by the Forensic Diversion Study Committee.)

**Effective Date:** July 1, 2007.

**Explanation of State Expenditures:** *Definition of Criminal Gang:* The definition of a criminal gang under IC 35-45-9-1 is used in several sections of the code unrelated to criminal penalties, including for the Anti-Gang Counseling Pilot Program and Fund in the Department of Education; the definition of psychologically affected properties; an aggrieved person for purposes of civil remedies for racketeering activity; and for limited liability of parents for damages caused by a child. A change in the number of members defining a criminal gang has indeterminate fiscal impact in these sections.

The definition of criminal gang under both IC 35-45-9-1 and IC 35-50-2-1.4 affects criminal and juvenile cases with potentially increased fiscal cost based on changes in the bill. There are two criminal offenses involving criminal gangs including criminal gang activity, a Class D felony, and criminal gang intimidation, a Class C felony. Under IC 31-30-1-4, the juvenile court does not have jurisdiction over these cases. There are no data available to indicate if more offenders may be convicted of these crimes if the number of gang members is reduced from five to three. On average between 2001 and 2005, there were two offenders a year committed to a state correctional facility for criminal gang activity and no offenders committed for criminal gang intimidation. Also, violation of the sections concerning criminal gang activity or intimidation is a racketeering activity and may lead to a conviction for corrupt business influence, a Class C felony. Between 2001 and 2005, five offenders a year on average were committed to a state correctional facility for corrupt business influence.

*Added Costs for the Department of Corrections* – Based on the definition of criminal gang activity in IC 35-50-2-1.4, the state may seek to have an additional fixed term of imprisonment equal to the sentence imposed for the underlying felony or to the longest sentence for multiple felonies. This fixed term of incarceration runs consecutively to the underlying sentence and may not be suspended. If offenders are incarcerated for longer periods of time, costs to the state could increase. Further, if the defendant committed murder while committing criminal gang activity, the state may seek either the death penalty or life in prison without parole. State expenditures could increase if a defendant is subject to a death penalty or life in prison without parole rather than a determinate sentence. If a prosecuting attorney requests the death penalty and the court imposes a death sentence on a defendant, then state expenditures may be less than when a prosecuting attorney seeks and the court imposes life imprisonment without parole. A determinate sentence of 65 years where the offender is released after 32 years for good behavior requires less expenditures than the other two sentences.

*Criminal Gang Witness Protection Program* – The Criminal Gang Witness Protection Program assists witnesses of gang crimes with temporary living costs, moving expenses, rent, security deposits, and other appropriate expenses. There are no other witness protection programs operated by state or local units in Indiana, making an estimate of the potential costs indeterminate. The bill also establishes the Gang Crime Witness Protection Fund which does not revert to the state General Fund at the end of the year. No appropriations are attached to this bill. The Criminal Justice Institute would be responsible for developing and managing the criminal gang protection program and is required to identify and obtain grants to fund this program.

**Explanation of State Revenues:** *Definition of Criminal Gang and Felony Offenses:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony and a Class C felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

**Explanation of Local Expenditures:** *Forensic Diversion Programs* – This bill gives sentencing courts the option to select whether eligible offenders are to be placed in a forensic diversion program, if the court operates one. (Under a recent court decision, offenders who meet all of the criteria to be in a forensic diversion program would automatically be entitled to be in a forensic diversion program.) Offenders who have a dual diagnosis for both mental illness and an addiction disorder would also qualify for a forensic diversion program.

*Background on Forensic Diversion Programs* – There are two types of forensic diversion programs. Pre-conviction programs are designed to treat adults with mental illnesses or addiction disorders who have been charged with a nonviolent misdemeanor or a Class D felony that can be reduced to a Class A misdemeanor. Class D felonies can be reduced to a Class A misdemeanor if the offender did not possess child pornography, commit domestic battery or commit a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor. In pre-conviction programs a person will plead guilty to a charge, participate in a program for a maximum three years, and if successfully completed will have the charge dismissed by the court.

Post-conviction forensic diversion programs are developed for offenders who are diagnosed with either a mental illness or an addiction disorder and has been convicted of committing a misdemeanor or felony that is not violent and did not involve drug dealing. In post-conviction programs, offenders plead guilty, participate in a forensic diversion program, and if successfully completed could avoid any prison time in Department of Correction (DOC) facilities.

Each county with a community correction advisory board is required to develop a plan for forensic diversion. Counties without a community corrections advisory board are permitted to organize a forensic diversion program advisory board. An individual may request treatment in a forensic diversion program, or a court may order an evaluation of the individual to determine if the individual is an appropriate candidate for the program.

In a recent decision, the Indiana Court of Appeals ruled that any person who qualifies for a forensic diversion program because of a mental illness or an addiction disorder diagnosis and has been convicted of a qualifying offense is entitled to have all or a portion of their sentence suspended. During the suspended portion of the sentence, the person is required to be placed on probation. As a condition of probation, the person is required to successfully participate and complete the program. Since an offender may need as many as 12 months to successfully complete the forensic diversion program, courts under current law would be required to allow a large number of offenders to be in the program.

The Indiana Department of Correction is currently funding pilot programs in seven of the ten counties in Indiana that operate forensic diversion programs.

*Alcohol and Drug Services Program* – As of April 2007, certified court-established alcohol and drug services programs operate in 54 counties. The costs of these programs are largely covered by user fees (see *Explanation of Local Revenues*) although the county may have to absorb some of the costs for providing

services for indigent offenders.

**Explanation of Local Revenues:** *Alcohol and Drug Services Programs:* Under IC 12-23-14-16, the court may require a person to pay a fee of not more than \$400 for participation in a program.

**State Agencies Affected:** Department of Correction; Criminal Justice Institute.

**Local Agencies Affected:** DOC reports that ten counties operate forensic diversion programs: Allen, Bartholomew, Delaware, Lake, LaPorte, Marion, Shelby, St. Joseph, Tippecanoe, and Vanderburgh Counties.

**Information Sources:** Deana McMurray, Department of Correction; Ruble v. State of Indiana 849 N.E. 2d 165 (Ind. Ct. App. 2006); <http://www.in.gov/judiciary/cadp/docs/admin/program-directory.pdf>

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